

Chapter 2.180

EMPLOYEE APPEAL BOARD

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2.180.010 Creation.

Pursuant to UTAH CODE ANN. §10-3-1106, an employee appeal board is hereby created for the city.

2.180.020 Board composition.

The employee appeal board shall consist of five members, determined as follows:

A. A member of the city council chosen by the city manager with advice and consent of the city council, who shall act as chairperson and shall vote. Such member shall serve until a replacement is appointed and qualified.

B. Another member chosen by the city manager from among the city's department heads or statutory officers, or another person not affiliated with the city's government, who may have expertise or experience in municipal employment matters. Such member shall serve at the city manager's pleasure. The city manager himself shall not, however, sit on the employee appeal board.

C. Three appointed or regular city employees, who shall be elected and chosen from the appointed officers and employees of the city. Such election shall be conducted by the director of the city's human resources division, under supervision of the director of the city's administrative services department in January of each year, and shall be by secret ballot. These board members shall originally serve terms of one, two, and three

years and shall thereafter serve terms of two years. Such members of the appeals board may not participate in a hearing when any of the following conditions exist:

1. When the member is the appellant or has been formally disciplined within the 12 months preceding the hearing;

2. When the member is employed in the same department as the appealing employee;

3. When the member declines to serve on the board for purposes of the appeal due to personal involvement in the events leading to the subject disciplinary action or for any other valid reason; or

4. When the member is related by blood or by marriage to the appealing employee. The city manager's decision on this issue shall be conclusive.

D. If a member of the appeals board declines or otherwise is disqualified from participating in a hearing, then that member shall be replaced, for the purpose of that hearing, by a temporary member, who shall be an employee or appointed officer of the city chosen by the balance of the appeal board.

2.180.030 Operation.

A. The appeal board is authorized only to hear appeals under UTAH CODE ANN. §10-3-1106(1) by city employees who have been discharged, suspended for over two days without pay, or involuntarily transferred to a position with less remuneration for any reason.

B. Appeals to the appeal board shall be subject to, and shall comply with, the requirements of UTAH CODE ANN. §10-3-1106.

C. Hearings shall be conducted in accordance with any procedures promulgated by the city's human resources director in consultation with the city attorney, subject to approval by the city manager.

D. Votes shall be by secret ballot.

E. The ruling of the appeal board shall be final, subject to any appeal right to the Court of Appeals under UTAH CODE ANN. §10-3-1106.

2.180.040. Standard of review.

The employee appeal board shall review a decision using the following standard of review:

Step 1: Do the facts support the need for discipline or other remedial action as set forth in the decision under appeal? In other words, was the action warranted? If the city's account of the evidence is plausible in light of the record viewed in its entirety, the decision should be upheld, even though the board may have weighed the evidence differently had it been in the decision maker's position. In order to overturn a disciplinary action, the board must have a definite and firm conviction that the underlying decision was erroneous.

In an appeal where the employee was discharged, not for disciplinary reasons but because the employee was no longer able or qualified to do the job, the board's analysis shall end with step 1 of the analysis as set forth above. However, in an appeal of any other disciplinary action, the board shall proceed to step 2 of the analysis, set forth below:

Step 2: In a disciplinary action, if the facts support the need for action to be taken, is the action taken proportionate to the charges? Discipline imposed for employee misconduct is within the discretion of his supervisor, department head and city manager as provided elsewhere in this title. Unless the board finds the penalty so harsh as to constitute an abuse, rather than an exercise of the department head's discretion, the decision of the department head should be upheld.

2.180.050. Rights of appellant.

An appellant may present relevant information in mitigation, including the presentation of witnesses and other evidence. Such evidence must relate to (a) the cause for the action taken as set forth in the disciplinary decision, and (b) any issues raised at the prior internal proceeding(s) before the supervisor, department head, city manager, or designee.

2.180.060. Discovery.

Discovery shall be limited to that which is relevant and not privileged, and for which each party has a substantial, demonstrable need for supporting their respective claims or defenses.